

State of the Judiciary: "A Court System for Tough Times"
Chief Justice Randall T. Shepard, Indiana Supreme Court
Message to the Legislature
January 14, 2009

There was a time when people who worked in the judiciary thought of their task solely in terms of the rulings – guilty/not guilty, liable or not liable, sustained or overruled. Judges were people who waited for what walked in the door, listened to the evidence and considered the law, and then ruled for one side or the other. The courtroom was thought of as a place of relative detachment from the hub-bub in the rest of life.

In fact, the work courts do is intimately connected to all of society. When the inevitable disputes of daily life arise, people rely on courts to resolve disputes as quickly and cheaply as possible, providing confidence that laws are actually enforced, on some reasonable timetable, at some reasonable expense. Can contracts be enforced, family disputes resolved, criminal violators held accountable? Society runs on the trust that the answer to all these will mostly be yes. Just as trust in the mechanics of finance empowers the real economy, effective and reliable courts are a key part of the engine that keeps America going.

Effective and reliable courts are especially important in times when the public and private sectors are so pressed. My speech today focuses on how the fallout of the recession shows up in courts, and how Indiana's courts are doing our part to contribute toward recovery.

The Pressure on Families

It but speaks the obvious to say that a bad economy puts pressures on families -- many times in ways that affect children. We see this in a rising number of new cases about abused and neglected children.

This development renders all the more important and timely the decision of the 2008 General Assembly to reorganize Indiana's effort to protect children in need of services and children in the delinquency system. The decision to transfer finance for the care of such children from the counties to the state was partly a matter of property tax relief, but it is also giving Indiana the chance to create a safety net for children that is better staffed, better coordinated, and more purposeful than ever. Governor Daniels signed this legislation in March. The executive and judicial branches have acted with remarkable cooperation and a sense of urgency to make ready for this opportunity. A host of joint committees worked out the details for this new initiative. Hundreds of court and Department of Child Services staff went through training before year's end and we were ready when the launch occurred a week ago last Friday. House Bill 1001 was the single largest financial commitment to the needs of troubled children in state history, and we are determined that it will make a difference in their lives.

Wrapped inside this initiative is a small story about efficient government. Among the features of this new world is the electronic exchange of information on juvenile cases between juvenile probation officers, the courts, and the DCS caseworkers. Our trial court technology staff, led by Mary DePrez, collaborated with DCS to construct on very short order the computer technology to make this happen. They did it in-house, without General Fund money, and it too was up and running by last week. The internal design of this system saved time and money, but more to the

point it will permit services and placement for threatened or troubled children more quickly and more effectively. And it will allow Indiana to maximize the amount of federal reimbursement for providing services to children. Indiana has over time left tens of millions of dollars on the sidewalk. No more!

With abuse and neglect on the rise, it is all the more urgent that we provide threatened children with an advocate, a guardian ad litem or a court appointed special advocate. These advocates do speak up for children, but they frequently do more than that. They are often the only point of stability in a child's world. A recent session of the General Assembly enacted Governor Daniels' proposal that all abused and neglected children should have such an advocate. Indiana has approached this need in a way that is both humane and cost-efficient, by recruiting community volunteers. Thousands of citizens have volunteered their time. You gave us the money to recruit and train an even larger corps of volunteers. Last year new volunteers signed up at record levels - up 50% in one year, thanks in part to a large cadre from the Indiana Retired Teachers Association.

Some of the family stress that creates more cases of abuse manifests itself as domestic violence. We have created an electronic system that notifies law enforcement as soon as a domestic violence protective order is issued. We now have this system up and running in 72 counties, including Lake and Marion. Jackson County and Ohio County began using it last week, and the day before yesterday it went on line in South Bend. It is a line of defense which we have financed with federal funds and it is literally saving lives. Building better protection against domestic violence is not something you postpone in hard times, it's something you race to accomplish.

You can certainly see hard times in a criminal court. The defendants we see there run the gamut from hardened felons to people who commit a misdemeanor and find themselves so embarrassed that they sit up and fly right and we never see them again. Most of the people fall in between, and most serve their time on probation or in community corrections. About six times as many people are on probation or community corrections as there are at the Department of Correction. We have to be as smart as possible at matching sanctions to fit the offense and the offender. And we are trying to do this in multiple ways.

First, challenging as it is to find funds to launch new ventures, we have been strengthening local correctional programs. We created new drug courts last year in Valparaiso, Kokomo, and Tell City, bringing the total to 29. Independent research on Indiana's drug courts demonstrated that they produce a lower re-offense rate, and drug courts produce a better employment rate for offenders, all at lower expense than other more traditional penalties. We began two new drug and alcohol programs, and three new re-entry courts for returning offenders, based on the successful model started in Ft. Wayne. We devised a system for safely transferring probation supervision across county lines, a system that should promote both public safety and the employment of offenders. And we are at work on a new risk assessment system that will help courts and law enforcement sort out the errant sheep from the truly dangerous. This is good for public safety, and good for the state's economy.

The Foreclosure Crisis

As you know, Indiana's courts and Indiana's lawyers have created a system – now emulated by several other states – to organize and support attorneys who are willing to volunteer their time to citizens with civil legal problems who cannot afford to hire a lawyer. In addition to these pro bono lawyers, Indiana has over a thousand trained and certified mediators who help people resolve disputes on their own and avoid the time and cost of trial.

We believe that these lawyers and mediators and judges can help with one of the growing challenges people face: mortgage foreclosure. Indiana is no longer number one on the national list of hurt, but foreclosures in our state have risen fifty percent in five years. Law and policy on these subjects is made in the General Assembly and in the Congress, but whether courts are adroit at carrying out these policies in individual cases is crucial to homeowners, to landlords and tenants, and to lenders. Sorting out when loan modification may be feasible and when it is not and whether there's a way that people may manage to stay in their homes, or not, and doing that as promptly as possible, takes knowledge, skill, and commitment.

As you know, Indiana's effort on the foreclosure problem is being led by Lieutenant Governor Skillman. She and the Indiana Housing and Community Development Authority have created the Indiana Foreclosure Prevention Network, which includes lenders, government agencies, housing counselors, and community non-profits. I have told the Lieutenant Governor that the judicial branch would like to join this campaign, and she has readily agreed. Whatever else we are able to contribute, I promise you this: by summer Indiana will have trained more judges and pro bono lawyers and mediators to help people facing foreclosure than any other court system in America.

Internal Cost-Savings

I want you to know that we will manage our own work in ways that contribute to making budget. As you know, we joined in the decision by Governor Daniels and the leadership of the General Assembly that froze our own pay and that of our staff. But, we are engaged in helping the state's finances in other ways.

First, this time last year we had just launched a new electronic traffic citation system. Gone are handwritten traffic tickets; the offender's license and registration are scanned instead, and a legible ticket printed. Gone too is all the time needed to enter and re-enter the information generated by Indiana's 600 law enforcement agencies. That new system, eCWS, is now in the hands of the State Police and 57 other police and sheriffs' departments (this month Floyd County, Griffith, New Albany, and Pulaski County will start using it.) It saves time and money wherever we deploy it.

Second, since this time last year we have achieved universal use of our system to enable Indiana's courts to send information about traffic cases to the BMV electronically, saving thousands of dollars in paper and data re-entry. And, this achievement will protect for Indiana some \$34 million in federal highway funds.

Third, on the revenue side, how much the State can collect in delinquent tax – and how quickly the collections come in – depends in part on how promptly the Department of Revenue can process tax warrants through the trial courts. We worked with Revenue to construct computer technology that sends tax warrant information electronically to county clerks – for free. This

will produce not a massive but a tangible contribution to the revenue forecast. We'll keep looking for other such opportunities.

Planning for Tomorrow

Moments like the present, when great leaps forward are not in the cards, are a good occasion to map out the future. The Board of the Judicial Conference of Indiana has spent the last few months planning for the long-range future of our state's courts. The Board consists of judges elected by our trial judges. A committee of the Board led by Judge Terry Shewmaker of Elkhart and Judge Mark Stoner of Indianapolis has issued a working document, now being discussed in local meetings. It focuses on upgrading judicial and staff education, on building collaboration among judges in counties and between counties, on accelerating state support for trial court operation, and on sorting out the multiple selection systems by which Indiana chooses judges. We believe that the end product will be a blueprint for an even stronger court system, a blueprint drawn by trial court judges.

An Anniversary that Prompts Hope

Governor Daniels quoted Abraham Lincoln in his speech on Monday, and I want to close by telling you about the judiciary's own way of observing the two hundredth anniversary of Lincoln's birth. Abraham Lincoln was many things: a great President, the Great Emancipator, a great Hoosier. He was perhaps Indiana's greatest contribution to American history.

He was also a first-rate lawyer and an energetic public citizen, whose experience as a lawyer gave him special insight into why making law, executing law, and adjudicating law have been so important to the success of what Washington called "the American experiment." These are lessons about our national life and about citizenship that are worth celebrating and re-telling. And so, on Lincoln's birthday, February 12th, with the help of teachers and the State Bar and local bars, and others, hundreds of judges and lawyers will go to Indiana's classrooms to talk with tens of thousands of students about Lincoln the President, Lincoln the lawyer, Lincoln the citizen, and about the kind of engaged citizens we want those students to become.

In the midst of so much gloom, this will be a message that conveys hope about the future of our nation and our state.